

Message

From: Kupchan, Simma [Kupchan.Simma@epa.gov]
Sent: 11/1/2018 1:55:36 PM
To: Hicks, Matt [Hicks.Matthew@epa.gov]
Subject: RE: proposed responses to FDEP's assumption questions

Thanks for the helpful recap. I am going to share with David (slightly edited).

Simma Kupchan
EPA Office of General Counsel
Water Law Office
WJC North Building # 7426Q
202-564-3105

From: Hicks, Matt
Sent: Wednesday, October 31, 2018 6:03 PM
To: McGill, Thomas <McGill.Thomas@epa.gov>
Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>
Subject: RE: proposed responses to FDEP's assumption questions

Tom,

Rosemary and I have been communicating with Simma throughout the day about th **Ex. 5 Deliberative Process (DP)**
Ex. 5 Deliberative Process (DP) Simma, Rosemary, and I have some language that we want to propose (see last yellow highlight below) but Simma thought it might be simplest for her to discuss it in person during their Weekly with David F tomorrow morning at 10 rather than send him something this afternoon via email. She will follow up with me in the morning. If he is ok with our language, they will memorialize in writing in a follow up email to us.

This is a change in the approach that we discussed with you earlier today (i.e., I would talk to Leif and he would contact David F) but I think it makes sense. I've emailed Leif so that he is aware of where we are on this issue and the path forward.

Recap of the issue:

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 Deliberative Process (DP)

There are no other issues so once we get resolution on this (either way) we should be able to get back to the state.

From: McGill, Thomas
Sent: Wednesday, October 31, 2018 1:33 PM
To: Hicks, Matt <Hicks.Matthew@epa.gov>
Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>
Subject: Re: proposed responses to FDEP's assumption questions

Great, thanks!

Sent from my iPhone

On Oct 31, 2018, at 1:28 PM, Hicks, Matt <Hicks.Matthew@epa.gov> wrote:

See proposed change in red. Purpose of changes: I'm not sure who at EPA will communicate to DEP and upon further consideration I'm confident Leif will talk with David F. Otherwise looks good.

From: McGill, Thomas
Sent: Wednesday, October 31, 2018 1:22 PM
To: Hicks, Matt <Hicks.Matthew@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Calli, Rosemary <Calli.Rosemary@epa.gov>
Subject: RE: proposed responses to FDEP's assumption questions

It's due now, so please let me know if the following language works:

R4 staff received feedback from David Fotouhi regarding proposed responses to FDEP's questions about 404 assumption rule/handbook language. ORC staff intend to discuss next steps with Leif Palmer on Oct 31 and potential follow-up with David prior to EPA responding to FDEP regarding their questions.

From: Hicks, Matt
Sent: Wednesday, October 31, 2018 1:16 PM
To: McGill, Thomas <McGill.Thomas@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
Cc: Calli, Rosemary <Calli.Rosemary@epa.gov>
Subject: RE: proposed responses to FDEP's assumption questions

Tom,

Rosemary had some proposed edits to the **Ex. 5 Deliberative Process (DP)** that Rosemary, Simma, and I are still mulling over. Once we get resolution on that, I will talk with Leif and propose that he follow up with David F. I don't know Leif's schedule but I'm hoping that would happen this afternoon.

We may not have any changes to David's comments on the **Ex. 5 Deliberative Process (DP)** so please do not put that in the write-up. Also, we are very close on being able to talk with Leif so if there's any way you can postpone your write-up until then that would be helpful.

From: McGill, Thomas

Sent: Wednesday, October 31, 2018 1:06 PM

To: Kupchan, Simma <Kupchan.Simma@epa.gov>

Cc: Calli, Rosemary <Calli.Rosemary@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>

Subject: FW: proposed responses to FDEP's assumption questions

Simma – Rosemary indicated you'll be following up with David regarding his comments below. Do you know whether you'll be able to connect with him and resolve this today, or may it take more time? I'm preparing a weekly report and welcome your suggestions on my characterization of the following write-up. Thanks. Tom

Ex. 5 Deliberative Process (DP)

From: Fotouhi, David

Sent: Tuesday, October 30, 2018 7:30 PM

To: Palmer, Leif <Palmer.Leif@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>

Cc: Glenn, Trey <Glenn.Trey@epa.gov>; Walker, Mary <walker.mary@epa.gov>; Ashbee, Blake <ashbee.blake@epa.gov>; Jenkins, Brandi <Jenkins.Brandi@epa.gov>; Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; McGill, Thomas <McGill.Thomas@epa.gov>; Zapata, Cesar <Zapata.Cesar@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>

Subject: RE: proposed responses to FDEP's assumption questions

My comments and suggestions are tracked in the attached document. Please let me know if you would like to discuss.

Best,

David

David Fotouhi

Principal Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Palmer, Leif

Sent: Thursday, October 25, 2018 7:02 PM

To: Fotouhi, David <Fotouhi.David@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>

Cc: Glenn, Trey <Glenn.Trey@epa.gov>; Walker, Mary <walker.mary@epa.gov>; Ashbee, Blake <ashbee.blake@epa.gov>; Jenkins, Brandi <Jenkins.Brandi@epa.gov>; Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; McGill, Thomas <McGill.Thomas@epa.gov>; Zapata, Cesar <Zapata.Cesar@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>

Subject: FW: proposed responses to FDEP's assumption questions

Importance: High

Matt & David – as mentioned on today's OGC call we've worked out responses to FDEP's latest questions. Trey asked me to forward this to you for your thoughts.

Matt Hicks' email below provides context.

Leif Palmer
Regional Counsel
US EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303
(404) 562-9542

Ex. 6 Personal Privacy (PP) (cell)

This email is from an attorney and may contain privileged information and attorney-client communications and should not be released under FOIA or discovery to individuals or entities outside of EPA or the U.S. Department of Justice without the knowledge of the sender.

From: Hicks, Matt

Sent: Tuesday, October 23, 2018 5:51 PM

To: Palmer, Leif <Palmer.Leif@epa.gov>

Cc: Ghosh, Mita <Ghosh.Mita@epa.gov>

Subject: FW: proposed responses to FDEP's assumption questions

Importance: High

Leif,

Here's EPA's proposed response to the two recent questions we received from DEP on Friday. These proposed responses were generated by the Region 4 team (Tom McGill level) after consulting with Simma (both issues) and Alexis (mitigation issue only) at OGC. DEP is waiting to hear from us before moving forward with their rulemaking so time is of the essence. More internal discussion is needed on the issue of incorporating retained waters list into EPA's Federal Register notice approving the state's program but that issue is not as time critical as the two below.

Ex. 5 AC/DP

Ex. 5 AC/DP

Please call me if you'd like to discuss further.

Thanks,

Matt

From: McGill, Thomas

Sent: Tuesday, October 23, 2018 5:10 PM

To: Zapata, Cesar <Zapata.Cesar@epa.gov>

Cc: Calli, Rosemary <Calli.Rosemary@epa.gov>; Purify, Johnnie <Purify.Johnnie@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Hurlid, Kathy <Hurlid.Kathy@epa.gov>; Allenbach, Becky <Allenbach.Becky@epa.gov>; Nagrani, Kavita <Nagrani.Kavita@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Parker, Christopher <Parker.Christopher@epa.gov>

Subject: proposed responses to FDEP's assumption questions

Importance: High

Cesar,

As a follow-up to our conversation yesterday, FDEP would appreciate EPA's quick feedback on questions they asked during calls held with some of EPA's assumption team members on Oct 19 and 22nd. You'll recall that I forwarded you an email from Matt Hicks on Oct 19 regarding their basic questions, and we received additional clarification with FDEP staff in a call held on Oct 22. We understand that FDEP is awaiting EPA's feedback prior to proceeding with their Notice of Proposed Rulemaking and that FDEP would prefer EPA's feedback through a conversation instead of in writing.

Attached is a document drafted by the EPA Assumption Team that includes: (1) FDEP's questions (highlighted in blue text); (2) proposed EPA responses (highlighted in yellow text); and (3) other information to provide background/context for FDEP's questions and/or the proposed responses. We would appreciate feedback from the RA and the senior leaders at OGC/OW as quickly as they can provide it before responding to FDEP.

If you have any questions or need any additional information please let us know.

Thanks.

Tom